



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

**FOR THE CALICO SOLAR PROJECT
COMPLAINT AND INVESTIGATION**

Docket No. 11-CAI-01

**NOTICE OF HEARING ON
BNSF RAILWAY COMPANY'S VERIFIED COMPLAINT
TO REVOKE CERTIFICATION**

PLEASE TAKE NOTICE that the Committee designated by the Energy Commission to conduct proceedings on post-certification and compliance matters relating to the **CALICO SOLAR PROJECT** (Docket No. 08-AFC-13) has scheduled a hearing on *BNSF Railway Company's Verified Complaint to Revoke Certification*, filed with the Commission's Chief Counsel on or about July 20, 2011, as follows:

Monday, October 3, 2011
Beginning at 2:00 p.m.

**California Energy Commission
Hearing Room B
1516 Ninth Street
Sacramento, CA 95814**

Teleconference Option

Parties and the Public may attend the hearing in person at the above location or by telephone and/or by computer via our "WebEx" web conferencing system. For details on how to participate by WebEx, please see the "Participation through WebEx" directions attached to this Notice.

Background

On or about July 12, 2011, BNSF Railway Company (BNSF) filed a *Verified Complaint to Revoke Certification* (Complaint) with the Energy Commission Siting/Dockets Unit. On or about July 14, 2011, the Siting/Dockets Unit submitted the Complaint to the Energy Commission Compliance Program Manager assigned to the Calico Solar Project (Docket No. 08-AFC-13). On or about July 20, 2011, BNSF filed the Complaint with the Energy Commission Chief Counsel.

The Complaint's primary allegations are: (1) Calico Solar, LLC's¹ "application and supplemental documentation contained material false statements regarding commercial viability and availability of SunCatchers for the Calico Solar Project" (hereinafter, the misrepresentation allegations) and (2) "there has been a 'significant failure' by Applicant to comply with the terms or conditions of approval of the application as specified by the Commission in its December 1, 2010 written decision" (hereinafter, the compliance allegations). (Complaint, ¶ 2.)

By an order dated August 5, 2011, the Siting Committee (also referred to as "Committee") directed the assigned Hearing Adviser to serve the Complaint on Calico. As provided in the Commission Regulations, Calico had 21 days from the date of service to file an answer to the Complaint. The August 5 order also directed Commission Staff to submit an assessment of the complaint's misrepresentation allegations and the answer pursuant to Section 1233.5.²

The Committee Order also affirmed Energy Commission Staff's duty under Section 1237 to investigate the Complaint's compliance allegations that Calico failed to comply with conditions of certification.

The Hearing Adviser's Office mailed the Complaint to Calico, Calico submitted a timely answer, **and Commission Staff filed a written assessment of the Complaint and Calico's answer.**

Purpose and Scope

The scheduled hearing will facilitate the Committee's evaluation and an adjudication of the Complaint's misrepresentation allegations. (Section 1230.) The compliance allegations were decided by the Committee in an order dated September 12, 2011. The Committee determined that BNSF's compliance allegations, which were the subject of the Section 1237 Commission Staff investigation, were both insufficiently pleaded. The Committee nonetheless addressed Staff's and Calico's disclosures that Calico has not complied with Condition of Certification REL-1 (REL-1). The Committee determined that the noncompliance was not significant in terms of impact and did not warrant sanctions. The full Commission must determine whether to relieve Calico of its continuing obligation to comply with REL-1.

Hearing Statements

BNSF, Calico, and Intervenor Patrick C. Jackson shall each serve and file a Hearing Statement. The statements must be received by the Hearing Adviser and other parties on the Proof of Service list and the Commission's Docket Unit, 1516 9th Street, MS-4, Sacramento, California 95814-5512, by 12:00 noon on Wednesday, September 28, 2011.

¹ The Committee notes that Calico recently changed its name to K Road Calico, LLC.

² All regulatory references are to Title 20 of the California Code of Regulations unless otherwise specified.

Each Hearing Statement shall include:

1. A discussion, with reference to legal citations, of the applicable legal standard for determining materiality in siting proceedings before the Energy Commission;
2. The identity of each witness sponsored by the party; a brief summary of the testimony to be offered by each witness; qualifications of each witness; and the time required to present direct testimony by each witness;
3. An exhibit list identifying exhibits and declarations that each party intends to offer into evidence. The exhibit list shall be submitted in the format shown in the attached sample exhibit list. The Hearing Office can provide the parties with a Word version of the exhibit list template upon request;
4. Proposals for briefing deadlines and other scheduling matters; and
5. Comments, if any, on the Committee's intention to use informal hearing procedures, as described below.

Format for Presenting Evidence

Each document shall be numbered and identified on the party's exhibit list as follows:

- BNSF's exhibits shall be numbered consecutively as Exhibits 1 through 99.
- Calico's exhibits shall be numbered consecutively as Exhibits 100 through 199.
- Patrick C. Jackson's exhibits shall be numbered consecutively as Exhibits 200 through 299.

Electronic (i.e., e-mail or compact disk) copies of the exhibits shall be provided to the Committee and other parties no later than noon on Wednesday, September 28, 2011. Copies of the exhibits must also be filed with the Commission's Siting/Dockets Unit by 5:00 p.m. on Wednesday, September 28, 2011 pursuant to Commission docketing requirements. In addition, printed copies of all exhibits shall be provided to the Hearing Adviser no later than 5:00 p.m. on Friday, September 30, 2011.

Notice of Committee's Intention to Use Informal Hearing Procedures

Pursuant to Government Code section 11445.10 et seq. and Section 1217 of the Commission's regulations, the Committee may conduct all or portions of the hearing in an informal manner. For example, the Committee could allow a panel of witnesses sponsored by a single party or by multiple parties to testify at one time, with an exchange of questions and responses between the witnesses and counsel for the various parties instead of formal direct and cross-examination. Other aspects of the hearing may be conducted informally as well at the discretion of the Committee. Any objections to the taking of testimony or evidence in an informal manner shall be filed on or before the deadline for filing Hearing Statements.

Petitions to Intervene to Become a Formal Party

The Energy Commission's decision on the Complaint will be based on the pleadings and evidence presented at the hearing. Only formal parties (BNSF, Calico, and approved Intervenor) may present evidence and cross-examine witnesses at the hearing.

Anyone with an appropriate interest in the Complaint may file a Petition to Intervene and become a formal party. At the hearing, a formal party may offer testimony and documentary evidence, receive documents filed by other parties, and cross-examine witnesses. However, a formal party must also comply with Committee orders, procedures, and filing requirements, and is subject to having its own witnesses cross-examined by other parties.

The deadline to file a Petition to Intervene in this complaint proceeding is noon on Monday, September 26, 2011. Intervenor will take the case as they find it at the time intervention is granted. Persons interested in obtaining intervenor status are therefore encouraged to file their petitions as soon as possible.

How to Intervene

The Energy Commission's Public Adviser's Office will assist any person or organization interested in preparing a Petition to Intervene. For assistance in this process, contact the Public Adviser's Office at (916) 654-4489 or (800) 822-6228 or e-mail: **[publicadviser@energy.state.ca.us]**.

Agency and Public Participation

It is not necessary to be an Intervenor to participate in the public process. Anyone may present public comments at the hearing and/or submit written comments to the Energy Commission's Docket Unit in connection with the hearing. Please include "For the Calico Solar Project Complaint and Investigation, Docket No. 11-CAI-01" on any written comments. Comments made or submitted after the close of the hearing will not be considered in the Committee's proposed decision.

Anyone desiring information on how to participate may contact the Public Adviser's Office.

Energy Commission Information

Contact Lourdes Quiroz if you have a disability and need assistance to participate in this event, at (916) 654-5146 or e-mail: **[lquiroz@energy.state.ca.us]**.

Questions of a legal or procedural nature should be directed to Kourtney Vaccaro, the Hearing Adviser, at (916) 654-4328 or e-mail: **[kvaccaro@energy.state.ca.us]**.

Media inquiries should be directed to the Office of Media and Public Communications at (916) 654-4989 or e-mail: **[mediaoffice@energy.state.ca.us]**.

Information concerning the status of the approved Calico Solar Project, as well as notices and other relevant documents, may be viewed on the Energy Commission's Internet web page at:

[<http://www.energy.ca.gov/sitingcases/calicosolar/index.html>].

Dated: September 19, 2011, in Sacramento, California.

A handwritten signature in black ink, appearing to read 'K. Douglas', written over a horizontal line.

KAREN DOUGLAS
Commissioner and Presiding Member
Siting Committee

A handwritten signature in black ink, appearing to read 'Robert B. Weisenmiller', written over a horizontal line.

ROBERT B. WEISENMILLER
Chair and Associate Member
Siting Committee

PARTICIPATION IN THE HEARING
THROUGH WEBEX
THE ENERGY COMMISSION'S ON-LINE MEETING SERVICE

1. COMPUTER LOG-ON WITH A DIRECT PHONE NUMBER:

- Please go to <https://energy.webex.com> and enter the meeting number unique to the specific hearing date:

➤ 10/3/11 - meeting number: **924 299 162**

When prompted, enter your information and the meeting password: **calico#1**

After you login, a prompt will appear on-screen for you to provide **your** phone number. In the **Number box**, type your area code and phone number and click OK. **You will receive a call back on your phone for the audio of the meeting.** International callers can use the "Country/Region" button to help make their connection.

2. COMPUTER LOG-ON FOR CALLERS WITH AN EXTENSION PHONE NUMBER, ETC:

- Please go to <https://energy.webex.com> and enter the unique meeting number:

➤ 10/3/11 - meeting number: **924 299 162**

When prompted, enter your information and the meeting password: **calico#1**

After you login, a prompt will ask for your phone number. Click "CANCEL."

- ***Instead** call 1-866-469-3239 (toll-free in the U.S. and Canada). When prompted, enter the meeting number above and your unique Attendee ID number which is listed in the top left area of your screen after you login.*

*

3. TELEPHONE ONLY (NO COMPUTER ACCESS):

- *Call 1-866-469-3239 (toll-free in the U.S. and Canada) and when prompted enter the meeting number:*

➤ 10/3/11 - meeting number: **924 299 162**

If you have difficulty joining the meeting, please call the WebEx Technical Support number at 1-866-229-3239. To see if your computer is compatible, visit [\[http://support.webex.com/support/system-requirements.html\]](http://support.webex.com/support/system-requirements.html).

Please be aware that the meeting's WebEx audio and on-screen activity may be recorded.



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Docket Number: **11-CAI-01**

Date: _____

Project Name: **CALICO SOLAR PROJECT COMPLAINT AND INVESTIGATION**

SAMPLE EXHIBIT LIST

Exhibit	Docket Transaction Number	Brief Description	Offered	Admitted	Refused
BNSF RAILWAY COMPANY'S EXHIBITS					
1					
K ROAD CALICO, LLC'S EXHIBITS					
100					
INTERVENOR PATRICK C. JACKSON'S EXHIBITS					
200					

SUBMIT ALL EXHIBIT LISTS IN WORD FORMAT